

DOE Order 251.1A

"Directives System"

Performance Based Contracts: Order Review Panel Decision On Team Report Recommendations

The Panel has reviewed the subject report and has disposed of the recommendations contained therein as follows.

We concur in team report recommendation 1, which is to delete the CRD. We direct you to implement it. It should be noted, however, that deleting the CRD in no way affects the requirement that the Directives System Manager distribute the draft directive to contractors for comment and attempt to resolve all major issues. This requirement is stated in DOE M 251.1-1A, Directive Systems Manual, Chapter III, Coordination and Issue Resolution Process. The Panel believes there is no need for a CRD to tell contractors to comment on draft directives, since it is in the contractors' interest to do so.

We concur in the team report recommendation 2, which is to add a contractor applicability template to the Order. Additionally, although not part of the team's recommendation, the Order should also be revised to advise the DOE community that the use of CRDs as a mechanism for establishing contract requirements is only appropriate for DOE's site/facility management contracts. To the extent that the drafter of a DOE Order desires to address other contracts, the drafter should task the Procurement Executive of DOE or the Procurement Executive of NNSA to work with the responsible office to develop, publish for public comment, and incorporate into the DOE acquisition regulation any required contract clause and clause prescription that should be inserted in other than site/facility management contracts. We direct you to implement this modified recommendation.

We concur in the team report recommendation 3, which is to add CRD drafting guidelines.

The Panel has additional direction. The Order should be modified to instruct Order drafters not to require flow down of a CRD to subcontracts, unless it is absolutely necessary to ensure the purpose of the Order is achieved. Implementation of a CRD's requirements, and of other contract requirements, should generally be left to the contractor. Contractors should generally be given the discretion to do what is necessary to accomplish the objective effectively and economically. We direct you to implement this additional direction.